

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:   
: MAR-CAN TRANSPORTATION COMPANY, INC., :  
: Plaintiff, :  
: : 20-CV-8743 (JPC)  
-v- :  
: :  
: LOCAL 854 PENSION FUND, :  
: Defendant. :  
: :  
-----X

JOHN P. CRONAN, United States District Judge:

Plaintiff Mar-Can Transportation Co. filed the Complaint in this case on October 20, 2020.

(Dkt. 1.) On November 16, 2020, three individuals filed a motion to intervene and a motion to dismiss. (Dkts. 10, 11.) The Court held a conference at which it set a briefing schedule for Plaintiff to oppose the motion to intervene and for the putative Intervenor Defendants to file any reply.

On December 7, 2020, two other third-party individuals filed a letter requesting that this action be held in abeyance until the resolution of four related cases in the Eastern District of New York. (Dkt. 23.) These cases are: *Curcio v. Demopoulos*, No. 20 Civ. 5463 (RRM) (PK) (E.D.N.Y.); *Demopoulos v. Curcio*, 20 Civ. 5441 (RRM) (PK) (E.D.N.Y.); *Demopoulos v. Curcio*, No. 20 Civ. 2151 (RRM) (PK) (E.D.N.Y.); and *Demopoulos v. Curcio*, No. 20 Civ. 1208 (RRM) (PK) (E.D.N.Y.). The Court ordered Plaintiff and the Putative Intervenors to respond, Dkt. 24, and both parties did, Dkts. 26, 33. On December 16, 2020, Plaintiff also filed a letter motion seeking leave “to move this Court to issue an order clarifying the terms of [Plaintiff’s] escrow obligation, pending [Defendant’s] appearance in this lawsuit.” (Dkt. 32.) The Court has yet to decide whether this action should be held in abeyance, Dkt. 23, or whether the Court should issue the order Plaintiff seeks regarding Plaintiff’s escrow obligation, Dkt. 32.

In its Complaint, Plaintiff alleges that venue is proper here “because the plaintiff does business and has a principal place of business within this district, in the County of Westchester.” Dkt. 1 ¶ 6 (citing 29 U.S.C. § 1451). However, the Employee Retirement Income Security Act (“ERISA”) provides that ERISA actions may be brought “in the district where the plan is administered or where a defendant resides or does business.” 29 U.S.C. § 1451(d). And the Complaint alleges that Defendant Local 854 Pension Fund “maintains its office and is administered at 50 Lindbergh Blvd., Suite 207, Uniondale, New York 11553 in Nassau County.” *Id.* ¶ 12.

Plaintiff is ORDERED to show cause why this case should not be transferred to the Eastern District of New York. *See* 28 U.S.C. § 1406(a); 28 U.S.C. § 1404(a). Plaintiff shall submit a letter, no more than five pages in length, by January 5, 2021 setting forth the reasons why venue is proper in this district, *see* 29 U.S.C. § 1451(d), and why transfer would not promote convenience and the interests of justice. If Plaintiff consents to the transfer, Plaintiff shall indicate this in the letter.

It is further ORDERED that Plaintiff serve Defendant with a copy of this Order within one week of the date of this Order. Within two business days of service, Plaintiff must file proof of such service on the docket.

This Order does not affect any other deadlines already ordered by the Court.

SO ORDERED.

Dated: December 22, 2020  
New York, New York

---



JOHN P. CRONAN  
United States District Judge